

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FERMIN GERVACIO-ROSALES,

Plaintiff,

-against-

ALLY FINANCIAL, INC., CAPITAL ONE
FINANCIAL CORPORATION, LEXISNEXIS
RISK DATA MANAGEMENT INC., NISSAN
MOTOR ACCEPTANCE COMPANY LLC,
SYNCHRONY FINANCIAL, EQUIFAX
INFORMATION SERVICES LLC, EXPERIAN
INFORMATION SOLUTIONS, INC., AND
TRANSUNION INTERACTIVE, INC.,

Defendants.

Civil Action No. _____

NOTICE OF REMOVAL

TO: United States District Court, Eastern District of New York:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1331, 1441 and 1446, Defendant Nissan Motor Acceptance Company LLC (“NMAC”), by and through its attorneys, Holland & Knight LLP, hereby removes this action to the United States District Court for the Eastern District of New York, where there is a question of federal law at issue. NMAC respectfully states the following grounds for removing this action:

RELEVANT FACTS

1. NMAC is a defendant in the civil action entitled *Fermin Gervacio-Rosales v. Nissan Motor Acceptance Company LLC, et al*, Index. No. 516839/2024, pending in the Supreme Court of the State of New York, County of Kings (“State Court Action”).

2. Plaintiff Fermin Gervacio-Rosales (“Plaintiff”) filed a Complaint on June 18, 2024, which was served upon NMAC on June 28, 2024. *See*, Complaint (“State Court Materials” Exhibit A).

3. Plaintiff alleges claims against NMAC and the other Defendants under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* ("FCRA"). *See generally* Compl.

4. As of result of Defendants' alleged violations of the FCRA, Plaintiff demands judgment against Defendants for statutory damages, punitive damages, and attorneys' fees and costs. (Plaintiff's Complaint Prayer for Relief, p. 27).

5. As of July 24, 2024, no other pleadings or papers have been filed with the Supreme Court of the State of New York, County of Kings.

6. The United States District Court for the Eastern District of New York embraces the place where the State Court Action is pending.

TIMELINESS OF REMOVAL

7. The Complaint was served on NMAC on June 28, 2024. This Notice of Removal is therefore timely because it was filed within 30 days of NMAC accepting service.

THE COURT HAS SUBJECT MATTER JURISDICTION

8. Removal is proper under 28 U.S.C. § 1331, because the Plaintiff alleges, *inter alia*, federal claims against NMAC for violation of the federal FCRA.

9. United States District Courts are vested with jurisdiction to consider cases or controversies "arising under" the laws of the United States of America such as the FCRA.

10. Removal of such cases is governed by 28 U.S.C. §§ 1331 and 1441(a). Section 1331 states, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Further, Section 1441(a) states any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

11. Plaintiff's causes of action for alleged violations of the FCRA, 15 U.S.C. § 1681 *et seq.*, "arises under" the laws of the United States. *See* 28 U.S.C. § 1331; 15 U.S.C. § 1681, *et seq.* Therefore, this Court may properly exercise jurisdiction over this claim pursuant to 28 U.S.C. § 1331.

12. NMAC is the only Defendant to have appeared in the State Court Action. After diligent search and inquiry, NMAC has been unable to get in touch with anyone for LexisNexis Risk Data Management Inc. to determine their positions on removal. The remaining Defendants have consented to removal of this action.

REMOVAL IS PROPER

13. This action is currently pending in the Supreme Court of the State of New York, County of Kings and may be removed to the United States District Court for the Eastern District of New York.

14. Accordingly, this case is properly removable as the requirements for federal question jurisdiction are satisfied.

15. NMAC reserves all rights, claims, and defenses relative to the action filed by Plaintiff and expressly does not waive any defense available in filing this notice.

16. Pursuant to 28 U.S.C. § 1446(d), NMAC will promptly serve this Notice of Removal upon all parties and shall promptly serve a copy thereof upon the clerk of the Supreme Court of the State of New York, County of Kings.

WHEREFORE, Defendant Nissan Motor Acceptance Company LLC respectfully requests that the matter designated by the Complaint be removed to the United States District Court for the Eastern District of New York, and proceed before this Court as an action properly removed.

Dated: July 26, 2024

HOLLAND & KNIGHT LLP

By: /s/ Jonathan M. Marmo
Jonathan M. Marmo, Esq.
2929 Arch Street
Philadelphia, PA 19104
(516) 395-1230
Jonathan.marmo@hklaw.com

Counsel for Defendant
Nissan Motor Acceptance Company LLC